IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 26868 of 1997

Between:

A. Ushan S/o.Ramulu, Conductor, E.73129,
R/o.1-1-117, Azamgunj, Bodhan Nizamabad District.

..... PETITIONER

AND

1. The Managing Director, APSRTC,
   Musheerabad, Hyderabad.
2. The Regional Manager APSRTC,
   Nizamabad.
3. The Depot Manager APSRTC Bus Depot,
   Nizamabad.
4. The Depot Manager APSRTC Bus Depot,
   Nizamabad District, Bodhan.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate Writ or direction particularly one in the name of Mandamus declaring the action of the Respondents in refusing to count the period from 03-03-1977 to 06-07-1979 in the Conductor Cadre, though the petitioner was appointed and joined as Conductor vide Proc.No.E2/752(2)/97-RM-NZB, dt.17/22-05-1997 as null and void and in violation of Art.14 and 16 of the Constitution of India and consequently direct the respondents to treat the said period in the category of Conductor for the purpose of counting seniority and other benefits in the interest of justice.

Counsel for the Petitioner: MR. V. NARASIMHA GOUD

Counsel for the Respondents: MR. V. T. M. PRASAD

The Court made the following:

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ORDER:

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This writ petition is filed by the petitioner aggrieved by the rejection order passed by the second respondent dated 17-05-1997 rejecting the claim of the petitioner as to the seniority to be counted from 03-03-1977 instead of 06-07-1979 as Conductor.

2. According to the petitioner he was called for interview from the Employment Exchange and thereafter a regular Selection Committee selected him and proceedings were issued by the Divisional Manager, Kharimnagar dated 03-02-1977 for the post of Conductor and the petitioner along with some others were sent to Nizamabad Depot. Under the said order the petitioner along with other selected candidates were directed to be sent for training for a period of ten days and after completion, the Depot Manager was directed to appoint them as per the requirement. The Depot Manager was also by the same proceedings directed that he should not appoint staff in excess of the requirement. It is also mentioned that if there are no vacancies available after training, the candidates may be kept in the panel and should not be re-directed to the office of the Divisional Manager. According to the petitioner, pursuant to the said proceedings, after training he was appointed on 03-03-1977 and continued discharging the duties of Conductor. But, however, when the seniority list was published the petitioner's seniority was shown from
07-07-1979 as Conductor instead of 03-03-1977 and therefore, the petitioner made a representation. The said representation, however, was rejected stating that the petitioner was originally appointed as Booking Clerk on 03-03-1977 and he was further promoted as a Conductor on
07-07-1979. Therefore, there is no illegality and the petitioner is not entitled to be counted from 03-03-1977 as Conductor. Aggrieved by that, the petitioner has come up with the present writ petition.

3. The learned Counsel for the petitioner contended that as the petitioner was selected for the post of Conductor, accordingly he was given training. Even after the

appointment order was issued by the third respondent, the petitioner has been continuing the duties as a Conductor and, therefore, the rejection of the representation of the petitioner for counting his seniority as Conductor from 03-03-1977 is illegal and without jurisdiction. The learned Counsel also contended that at any point of time, an order appointing the petitioner as Booking Clerk was served, the petitioner never reported to duty as Booking Clerk, therefore, the entire services of the petitioner has to be counted as Conductor and accordingly he has to be given seniority in the seniority list of the Conductors.

4. The claim of the petitioner was disputed and denied by the respondent-Corporation by filing counter affidavit. In the counter affidavit it is also stated that without disputing the facts that the petitioner was selected by the Selection Committee and the Divisional Manager issued proceedings on 03-02-1977 not only to give training to the petitioner along with another but also to appoint them as Conductors against the available vacancies. It is also stated that if there are no vacancies available, the candidates should be kept in the panel till vacancy arises. It is stated by the learned Standing Counsel that instead of keeping the petitioner in the panel he was appointed as a Booking Clerk in a regular vacancy available and the petitioner continued in the services for a period of two years and it is only in the year 1979 he was promoted as Conductor, therefore, there is no merit in the claim of the petitioner.

5. Heard both sides and considered the material on record.

6. As the dispute raised by the petitioner is as to his very appointment as Booking Clerk, this Court directed the respondent-Corporation to produce the Service Record as well as the other records concerning the appointment of the petitioner. The Corporation placed Service Record of the petitioner, which clearly shows that as per the entry in the Service Register, the petitioner was appointed as per the proceedings of the Depot Manager, Nizamabad dated 03-03-1977 as Booking Clerk on the pay of Rs.80/- per month in the said post. He was also given increment raising his pay to Rs.189/-. Thereafter on 07-07-1979 the petitioner was promoted as Conductor. To the same effect, the proceedings issued by the Depot Manager were also placed before this Court, in which along with the petitioner two others were

appointed as Booking Clerks by proceedings of the District Manager, Nizambad (DM). In view of the above facts, which are evident from the records of the Corporation, there is no merit in the claim of the petitioner that he was appointed as Conductor with effect from 03-03-1977.

7. The learned Counsel, however, advanced an argument that as the petitioner was discharging the functions as Conductor, he is entitled for being considered as a Conductor as no order of appointment of Booking Clerk was served on the petitioner. He relied upon a judgment of the Madras High Court in the case of **K.M.JAWAHAR v NEYVELI LIGNITE CORPN. LTD**[1]. I have gone through the judgment relied on by the learned Counsel. In that case, the petitioner was recruited as a Data Entry Operator, he was also given training and he was allowed to work both before and after training as Data Entry Operator and after completion of 480 days, his services were regularized as Industrial Worker Grade-II. When such proceedings were assailed before the Madras High Court, it was held that his services cannot be regularized in a different post than the post in which he has actually worked. Relying upon the said judgment, the learned Counsel contended that as the petitioner worked as a Conductor, he should have been regularized from the date of his initial appointment. But contrary to the facts referred to in the above case, in the present case the petitioner was admittedly appointed as a Booking Clerk, though he was selected as a Conductor and even training was given as Conductor, may be for want of vacancies. From the Order of the Divisional Manager dated 03-02-1977 it is clear that his appointment as a Conductor shall depend upon the availability of the vacancies of Conductors. Therefore, the petitioner cannot claim that he was appointed as a Conductor. The record shows that he was appointed as Booking Clerk. Therefore, he cannot claim that his services should be counted as Conductor from 03-03-1977.

8. Under the above circumstances, there is no merit in the present writ petition and the same is accordingly dismissed. No costs.

S. ANANDA REDDY, J

Dt.14-10-2004

Glv/kvh

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copies to:

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   Musheerabad, Hyderabad.
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